IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.3558 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE J. M. PANCHAL
AND
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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VALLABHBHAI SHAMJIBHAI GHELANI - Petitioner
Versus
THE STATE OF GUJARAT THR' SECRETARY & ORS. - Respondents

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== **Appearance :**
MR TULSI R SAVANI for Petitioner.
MR KRUNAL D PANDYA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 07/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the

Constitution of India, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ or order to quash notification dated August 28, 2003 issued under Section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short), which was published in the Gujarati Daily "*Saurashtra Samachar*" dated September 5, 2003 by which it was declared that Survey Nos.192/1 Paiki and 192/2 Paiki situate at Village: Budhel, Taluka: Bhavnagar, District: Bhavnagar were likely to be needed for the public purpose namely for Gujarat Water Supply & Sewerage Board Bhavnagar's Sardar Sarovar Canal based Drinking Water Supply Project. The petitioner has further prayed to set aside declaration made under Section 6 of the Act, which was published in the Gujarat Government Gazette Extraordinary on September 3, 2004 declaring that the lands mentioned therein are needed to be acquired for the public purpose namely for Gujarat Water Supply & Sewerage Board Bhavnagar's Sardar Sarovar Canal based Drinking Water Supply Project. The petitioner has also prayed to issue a writ of mandamus declaring that as the award under Section 11 of the Act was not made within a period of two years from the date of declaration made under Section 6 of the Act, the

acquisition proceedings have lapsed in terms of Section 11-A of the Act.

2. The petitioner is one of the co-owners of the lands bearing Survey Nos.192/1 Paiki 1, 192/1 Paiki 2, 192/1 Paiki 3, 192/2 Paiki 1 and 192/2 Paiki 2 situate at Village Budhel, Taluka: Bhavnagar, District: Bhavnagar. A proposal was received by the State Government to acquire the above mentioned lands for the public purpose namely for Gujarat Water Supply & Sewerage Board Bhavnagar's Sardar Sarovar Canal based Drinking Water Supply Project. On perusal of the same, the State Government was satisfied that the above mentioned lands were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on August 28, 2003. Thereafter, the petitioner was served with the notice as contemplated by Section 4 of the Act. On receipt of the notice, the petitioner lodged his objections on October 3, 2003. The Special Land Acquisition Officer took into consideration the objections lodged by the petitioner and forwarded his report under Section 5-A(2) of the Act to the

State Government. On scrutiny of the said report, the State Government was satisfied that the lands specified in the notification, which was published in the official gazette under Section 4(1) of the Act were needed to be acquired for the public purpose namely for Gujarat Water Supply & Sewerage Board Bhavnagar's Sardar Sarovar Canal based Drinking Water Supply Project. Therefore, the State Government made a declaration under Section 6 of the Act, which was published in the official gazette on September 3, 2004. The petitioner was thereafter served with the notice dated December 16, 2004 under Section 9 of the Act for determination of compensation payable to him. The petitioner was accorded hearing on January 11, 2005. On that day, he also filed his objections to the notice dated December 16, 2004. Ultimately, the Special Land Acquisition Officer made his award under Section 11 of the Act on September 13, 2006. After making of the award, the petitioner was served with notice dated January 9, 2007 under Section 12(2) of the Act, which was received by him on January 20, 2007. The case of the petitioner is that the Special Land Acquisition Officer failed to make an award under Section 11 of the Act within a period of two years from the date of

declaration made under Section 6 of the Act and, therefore, the entire proceedings for the acquisition of the lands in question should be treated as having lapsed. According to the petitioner, the government lands are situated adjoining the lands, which are sought to be acquired, and as the Government lands can be used for the purpose of Drinking Water Supply Project undertaken by the respondents, the acquisition of the lands in question should be regarded as illegal. What is claimed is that as the acquisition of the lands in question is arbitrary, discriminatory and violative of fundamental rights guaranteed to the petitioner under Article 19 of the Constitution, the same should be set aside. Under the circumstances, the petitioner has filed the instant petition and claimed the reliefs to which reference is made earlier.

3. On service of notice, Mr.Manoj Makwana, who is Special Land Acquisition Officer, Bhavnagar, has filed affidavit-in-reply on behalf of the respondent No.3 controverting the averments made in the petition. What is mentioned in the reply is that declaration made under Section 6 of the Act was published in Gujarati Daily '*Saurashtra Samachar'* on

September 13, 2004 whereas public notice of the substance of the declaration was given at convenient places in the said locality on September 14, 2004 and, therefore, the award made under Section 11 of the Act on September 13, 2006 cannot be construed to have been made after a period of two years from the date of publication of declaration made under Section 6 of the Act. Mr.Ashok Mehta, Special Land Acquisition Officer, Bhavnagar, has filed further affidavit-in-reply on behalf of the respondent No.3 on March 2, 2007 mentioning, *inter alia,* that no government land is situated adjoining to the lands acquired and, therefore, it is not correct to say that the government land can be utilized for the purpose of establishing Water Supply Project undertaken by the respondents. In support of this averment, the deponent has produced a copy of the map of Village: Budhel at Annexure-I to the reply. What is mentioned by Mr.Mehta in his reply affidavit is that the land bearing Survey No.215/3 shown in green colour in the map was government land adjoining to the land of the petitioner, but the same was allotted to the Gujarat Water Infrastructure Limited by the Collector, Bhavnagar, vide order dated January 18, 2002 for the purpose of constructing necessary infrastructures

to supply water to the town and village of Bhavnagar District and, therefore, it is not correct to say that the vacant government land adjoining to the lands acquired is available for the purpose for which the lands of the petitioner are acquired. It is further mentioned in the said reply that the possession of the land bearing Survey No.215/3 was handed over to the Gujarat Water Infrastructure Limited on *ad hoc* basis on February 20, 2002 after which the Gujarat Water Infrastructure Limited has constructed Pump-Houses, etc. on the said land. In support of this averment, Mr.Mehta has produced a copy of the order dated January 18, 2002 at Annexure-II with his reply. It is also stated in the reply that the Government of Gujarat by order dated December 22, 2006 has granted sanction to the allotment of land bearing Survey No.215/3 to the Gujarat Water Infrastructure Limited, made by the Collector, Bhavnagar, and in support of this averment, order dated December 22, 2006 is produced at Annexure-III to the reply.

4. This Court has heard Mr.Tulsi R. Savani, learned counsel for the petitioner, and Mr.Krunal D. Pandya, learned

Assistant Government Pleader for the State, at length and in great detail. This Court has also considered the documents forming part of the petition.

5. The first contention raised by the learned counsel for the petitioner that the Special Land Acquisition Officer did not make award under Section 11 of the Act within a period of two years from the date of publication of the declaration made under Section 6 of the Act and, therefore, the entire proceedings for acquisition of the lands in question should be treated as having lapsed, cannot be accepted. Section 6 of the Act, *inter alia,* provides that declaration made under the said Section shall be published in the official gazette and in two daily newspapers circulating in the locality in which the land is situate, of which at least one shall be in the regional language. It further provides that the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality and the last of the dates of such publication and the giving of such public notice is to be treated as the date of publication of the declaration. This is quite evident if one refers to the provisions of subsection (2) of

Section 6 of the Act. From the averments made in the affidavit-in-reply filed by Mr.Manoj Makwana, Special Land Acquisition Officer, Bhavnagar, on February 9, 2007 read with the contents of the award made under Section 11 of the Act, a copy of which is produced at Annexure-V, it is evident that the declaration made under Section 6 of the Act was published in *Gujarati* daily *'Pagdandi'* dated September 11, 2004 and in *Gujarati* daily "*Saurashtra Samachar"* dated September 13, 2004 whereas public notice of the substance of such declaration was given at convenient places in the said locality on September 14, 2004. The giving of notice containing the substance of the declaration made under Section 6 of the Act at convenient places in the locality will have to be treated as the last date of publication of the declaration made under Section 6 of the Act. This is quite evident from the scheme of subsection (2) of Section 6 of the Act. If the period of two years mentioned in Section 11-A of the Act is computed from September 14, 2004, which is the date on which the Special Land Acquisition had caused public notice of the substance of the declaration, to be given at convenient places in the said locality, it becomes apparent that the award dated September 14, 2006 was made

within a period of two years. Therefore, the contention that the award was made after a period of two years from the date of publication of the declaration made under Section 6 of the Act and, therefore, the entire acquisition proceedings should be treated as having lapsed, cannot be accepted and is hereby rejected.

6. The second contention raised by the learned counsel for the petitioner that the government land is available adjoining to the lands acquired for the purpose of Drinking Water Supply Project undertaken by the respondents and, therefore, the acquisition of the lands in question should be regarded as illegal, has no substance. As is evident from the affidavit-in-reply filed by Mr.Ashok Mehta, Special Land Acquisition Officer, Bhavnagar, on March 2, 2007, the government land bearing Survey No.215/3 was situated near the lands acquired in the instant case. The said Survey Number is already allotted to the Gujarat Water Infrastructure Limited by the Collector, Bhavnagar, *vide* order dated January 18, 2002 for the purpose of constructing necessary infrastructures to supply water to the town and village of Bhavnagar District. The

affidavit filed by Mr.Mehta further makes it clear that the possession of the said land was handed over to Gujarat Water Infrastructure Limited on February 20, 2002, after which the Gujarat Water Infrastructure Limited has constructed Pump-Houses, Underground Sumps, etc. It is relevant to notice that the Special Land Acquisition Officer, Bhavnagar, has made a statement on oath in paragraph 5 of his reply that no vacant government land is situated adjoining to the lands acquired in the instant case. The petitioner has not filed rejoinder controverting the said averment. Therefore, the Court would be justified in acting upon the statement made by Mr.Ashok Mehta that no vacant government land is situated near the lands acquired in the instant case. Thus, the plea that alternative land is available for the public purpose for which the lands in the instant case were acquired, has no factual basis and cannot be accepted.

7. The last contention that the petitioner whose only source of livelihood is income derived from the lands acquired in the instant case, is not rehabilitated or offered alternative lands and, therefore, the acquisition proceedings should be quashed,

is devoid of merits. It may be mentioned that this plea is not raised by the petitioner in the petition but is raised during the course of hearing of the petition. However, this point has been considered by the Supreme Court in the decisions rendered in *(1) Chameli Singh vs. State of U.P., AIR 1996 SC 1051; (2) New Reviera Cooperative Housing Society Limited & Anr. vs. Special Land Acquisition Officer & Ors., (1996) 2 SCC 731; (3) Bhatt Indravadan Nathalal vs. State of Gujarat, 2004 (2) GLH 224l and (4) State of Maharashtra & Anr. vs. Basantibai Mohanlal Khetan & Ors., AIR 1986 SC 1466* and negatived.

8. Section 23(1) of the Act provides for compensation for the acquired land at the price prevailing as on the date of publication of notification under Section 4(1) of the Act to be quantified at a later stage of the proceedings. For disposition or dislocation of the claimants even interest is payable under Section 23(1-A) of the Act as additional amount and provision for payment of interest is made under Sections 31 and 28 of the Act to recompensate the loss or right to enjoyment of the property from the date of notification, under Section 23(1-A) of the Act and from the date of possession till the compensation is

deposited. Therefore, the plea that the petitioner is not rehabilitated in life by offering other lands and, therefore, the acquisition proceedings should be set at naught, cannot be accepted and is hereby rejected.

9. The above mentioned three contentions are the only contentions raised by the learned counsel for the petitioner for consideration of the Court. No other plea is raised by the learned counsel for the petitioner in support of the instant petition. As the Court does not find any substance in any of the three contentions, which are raised by the petitioner, the petition, which lacks merits, deserves to be rejected.

For the foregoing reasons, the petition fails and is dismissed. Notice is discharged. There shall be no orders as to costs.

(J. M. Panchal, J.)

(Smt. Abhilasha Kumari, J.)

Rajendra